

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF NURSING

In the Matter of the Nursing License of
Cheryl A. Smith, R.N.,
License No. 95966-9

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge George A. Beck commencing at 10:30 a.m. on Tuesday, April 21, 1998, at the offices of the Minnesota Board of Nursing, Suite 500, 2829 University Avenue S.E., Minneapolis, Minnesota.

Louis Hoffman, Assistant Attorney General, 525 Park Avenue, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Board of Nursing ("Board"). Cheryl A. Smith ("Respondent") did not appear at the hearing. The record closed on April 21, 1998, upon the Respondent's failure to appear.

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Minnesota Board of Nursing, Suite 500, 2829 University Avenue, S.E., Minneapolis, Minnesota 55414, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not disciplinary action should be taken against the Respondent in accordance with Minn. Stat. §§ 148.261 and 148.265 (1996).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 19, 1997, a Notice of Conference with Board of Nursing Review Panel was served on the Respondent by sending it via the U.S. Mail to her last known address. The Notice scheduled a conference for January 14, 1998, at the Board offices. Respondent failed to appear at the conference and advised the Board staff that she did not intend to appear.

2. On March 12, 1998, a Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the Respondent, at her last known address of 17515 8th Avenue No., Minneapolis, Minnesota 55447. The Notice of and Order for Prehearing Conference and Hearing scheduled the prehearing conference for April 21, 1998.

3. The Notice of and Order for Prehearing Conference and Hearing that was mailed to the Respondent contained the following statement:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against the Respondent.

4. The Respondent did not appear at the April 21, 1998, Prehearing Conference. Respondent did not contact the Board or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by Respondent in this matter.

5. The allegations set forth in the Notice of and Order for Prehearing Conference, having been deemed proved and taken as true, are hereby incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Board of Nursing and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 214.10, 214.103 and 14.50 (1996).

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The Minnesota Board of Nursing has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000 (1995), the Respondent is in default as a result of her failure to appear at the scheduled prehearing conference.

5. Under Minn. Rule 1400.6000 (1995), when a party defaults, the allegations and the issues set out in the Notice of and Order for Prehearing Conference and

Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true and deemed proved.

6. Based upon the facts set out in the Notice of and Order for Prehearing Conference and Hearing, the Respondent has violated Minn. Stat. §§ 148.261, subd. 1 (3), (10), (17), and (21), and 148.265 (1996), and is subject to disciplinary action by the Minnesota Board of Nursing.

7. An order by the Board prescribing disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against the R.N. License of Cheryl A. Smith by the Minnesota Board of Nursing.

Dated this 27th day of April 1998.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.